

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 107 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

STATE OF GUJARAT

Versus

SOMABHAI PRATAPBHAI MALIYAD

Appearance:

1. Criminal Appeal No. 107 of 2001
MR PR ABICHANDANI, ADDL.PUBLIC PROSECUTOR for Petitioner No. 1
..... for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/10/2002

ORAL JUDGEMENT

Heard learned APP Mr. Abichandani and perused the
judgement. The State has approached this Court with

appeal against acquittal recorded by the learned JMFC, Gandhinagar in Summary Case No. 6486/90 acquitting the respondent for offence punishable under Section 85(1)(3) and 66(1)(B) of the Bombay Prohibition Act.

2. Read the papers. Learned Magistrate has observed that the doctor who had drawn the blood sample has not been examined and therefore, whether requisite procedure was followed or not while drawing the sample is a matter of doubt. The trial Court had afforded ample opportunity to the prosecution to lead appropriate evidence and the matter was prolonged for almost six and a half years, but the prosecution did not avail of that opportunity. Learned Magistrate has also observed that the methodology adopted by the Investigating Agency is also age-old and not accurate, which can be said to have contravened the right to live under Article 21 of the Constitution of India.

3. The State has not been able to indicate as to why this Court should exercise its Appellate powers in face of the glaring features recorded by the learned trial Judge. The settled position of law as it is, is that the Court has to be slow in interfering with an order of acquittal. The State having failed to indicate this aspect, this Court is not inclined to entertain this appeal. So far as factual part of the observations made in the judgement and order is concerned, there is no dispute. The appeal therefore must fail. Same is dismissed.

(A.L.Dave, J.)

*/Mohandas